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Practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, 1 July to 31 December 2017

Report of the Secretary-General

Summary

The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. The present report covers a six-month period, from 1 July to 31 December 2017. Going forward, future reports will cover one calendar year.

The General Assembly is invited to take note of the report.

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I. Introduction

1. The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour in accordance with the established procedures and regulations. The report covers the period from 1 July to 31 December 2017.

2. In order to align the report of the Secretary General on the practice in disciplinary matters and cases of possible criminal behaviour with the other reports on human resources management matters, the present report covers a six-month period, from 1 July to 31 December 2017. Going forward, future reports will cover a 12-month period, the calendar year.

3. A broad overview of the administrative framework in disciplinary matters, including the new administrative instruction on unsatisfactory conduct, investigations and disciplinary matters (ST/AI/2017/1), is provided in section II so that the information provided in sections III and IV may be understood in context. By virtue of the transitional arrangements in ST/AI/2017/1, the new administrative instruction applies only to matters where the investigation commenced on or after 26 October 2017. Accordingly, all matters reported upon in the present report were governed by the administrative instruction on revised disciplinary measures and procedures (ST/AI/371, as amended by ST/AI/371/Amend.1).

4. Section III contains a summary of the cases of established misconduct during the reporting period. Section IV contains data reflecting the disposition of cases completed during the reporting period, including cases that did not result in the imposition of a disciplinary measure, and information about appeals of disciplinary measures imposed since 1 July 2009. Section IV also provides data on the number and nature of cases referred to the Office of Human Resources Management for action during the reporting period. As the present report covers only a six-month period, no comparative data is set out in section IV, but such data will be provided in the next 12-month report. Section V provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

5. As envisaged in paragraph 17 of resolution 59/287, a consolidated information circular will be issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff members concerned.

II. Overview of the administrative framework with respect to disciplinary matters

A. Legislative framework governing the conduct of staff members[1]

6. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of

[1] Provisions relating to the status, rights and duties of staff members, and to disciplinary matters, can be found in the electronic version of the Human Resources Handbook (available at https://hr.un.org/handbook) under the categories "Duties, obligations and privileges" and "Administration of justice and disciplinary matters".

the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity".

7. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values (see, in particular, staff regulation 1.2 and staff rule 1.2).

8. Staff regulation 10.1 (a) provides that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct".

9. In addition, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures.

10. Examples of conduct for which disciplinary measures may be imposed are listed in section 2 of ST/AI/371, as amended by ST/AI/371/Amend.1, and section 3.5 of ST/AI/2017/1. Reference may also be made to the Secretary-General's bulletin on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5), the Secretary-General's bulletin on special measures for protection from sexual exploitation and abuse (ST/SGB/2003/13) and the Secretary-General's bulletin on protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations (ST/SGB/2017/2/Rev.1).

B. New administrative instruction on unsatisfactory conduct, investigations and the disciplinary process

11. On 26 October 2017, the Under-Secretary-General for Management promulgated an administrative instruction on unsatisfactory conduct, investigations and the disciplinary process (ST/AI/2017/1). In accordance with the transitional arrangements, investigations and disciplinary processes initiated before 26 October 2017 shall continue to be governed by the provisions of ST/AI/371, as amended by ST/AI/371/Amend.1.

12. Under the provisions of ST/AI/2017/1, all allegations of unsatisfactory conduct should be brought to the attention of the Office of Internal Oversight Services (OIOS). After receiving an allegation of unsatisfactory conduct, OIOS may decide either to consider the allegation or to refer it to a manager for assessment and possible investigation. OIOS should be apprised of decisions made by managers in relation to allegations of unsatisfactory conduct. These provisions are in line with the decision and requests made by the General Assembly in paragraphs 11 to 13 of its resolution 59/287, including the request for the creation of an administrative mechanism for the mandatory reporting by programme managers of allegations of misconduct to OIOS.

13. Section 6 of ST/AI/2017/1 contains minimum standards for the conduct of investigations. Certain new procedures are also outlined for staff members who are the subject of an investigation. For instance, such staff members must be notified in writing, prior to or at the start of an investigative interview, that they are the subject of an investigation and of the nature of the allegations against them. In addition, such staff members may now be accompanied by another staff member of their choice to act as an observer during the interview.

14. ST/AI/2017/1 also sets out the circumstances in which a staff member may be placed on administrative leave with or without pay in accordance with staff rule 10.4 (a). In this regard, a staff member may be placed on administrative leave at any time after an allegation of misconduct, and the period of administrative leave may continue until the completion of the disciplinary process. Depending on the circumstances of a case, administrative leave may be with pay or without pay. As reflected in ST/AI/2017/1, staff rule 10.4 (c) provides that, for cases of sexual exploitation and sexual abuse, a staff member may be placed on administrative leave without pay when there are reasonable grounds to believe (probable cause) that the staff member engaged in the sexual exploitation or sexual abuse. ST/AI/2017/1 specifies that, in cases where a staff member is placed on administrative leave without pay, the staff member will continue to maintain some entitlements and benefits.

15. Other matters addressed in the new administrative instruction include the sharing of information by the Organization with member organizations of the United Nations System Chief Executives Board for Coordination and the placement of a note in the official status files of former staff members.

C. Disciplinary process

16. Sections 7 to 9 of ST/AI/2017/1 contain a step-by-step summary of how matters are dealt with following the completion of an investigation, including details about the disciplinary process. The provisions of ST/AI/2017/1 reflect in large part the procedures that were already in place prior to its promulgation. Investigations that are completed by OIOS may be referred directly to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case. Where an investigation has been conducted under the head of office or another responsible official and the responsible official is of the view that misconduct may have occurred, the matter shall be referred to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.

17. If the Assistant Secretary-General for Human Resources Management decides to initiate a disciplinary process, the staff member shall be notified in writing of the allegations of misconduct and informed of the staff member's right to comment on the allegations and to seek the assistance of counsel in the staff member's defence through the Office of Staff Legal Assistance or from outside counsel at the staff member's own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff member, the Assistant Secretary-General shall decide whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management shall decide whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a). The Under-Secretary-General for Management may also decide to impose one or more administrative measures. In some cases, the first

step taken with respect to a matter referred to the Office of Human Resources Management is not to initiate a disciplinary process but rather to request the staff member to provide comments. The request for comments shall be made, inter alia, in compliance with staff rule 10.2 (c) if the issuance of a reprimand is being contemplated and to assist the Office in deciding whether to initiate a disciplinary process.

18. In accordance with staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the United Nations Dispute Tribunal challenging the imposition of the measure in accordance with chapter XI of the Staff Rules.[2]

D. Disciplinary measures

19. Staff rule 10.2 (a) provides that disciplinary measures may take one or more of the following forms (i.e. more than one measure may be imposed in each case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

20. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. In addition, in accordance with staff rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and gravity of the misconduct involved. Given the thoroughness of the review involved to assess the unique facts and features of each case, the specific sanction that applies to a specific type of misconduct cannot be determined in advance or applied across the board.

E. Other measures

21. Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands are administrative measures that are important for upholding standards of proper conduct and promoting accountability. Written reprimands are placed on the staff member's official status file. Warnings or letters of caution are managerial measures directed at fostering awareness of the proper standards of conduct. In

[2] Judgments of the United Nations Dispute and Appeals Tribunals relating to disciplinary cases may be found on the website of the Office of the Administration of Justice (www.un.org/en/oaj).

addition, where conduct that may amount to misconduct has an impact on performance, the issue may be addressed in the context of performance management. This may include training, counselling, the non-renewal of a contract or the termination of an appointment. The new administrative instruction (ST/AI/2017/1) contains specific provisions on administrative and managerial actions taken by programme managers in the light of unsatisfactory conduct by a staff member.

22. The new administrative instruction also contains specific provisions on the recovery of financial loss to the Organization pursuant to staff rule 10.1 (b) in cases where the loss results from actions or omissions that are wilful, reckless or grossly negligent.

23. Under article 10.8 of the statute of the United Nations Dispute Tribunal and article 9.5 of the statute of the United Nations Appeals Tribunal, each of the Tribunals may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability. Such action may include the initiation of an investigation and a disciplinary process.

III. Summary of cases in which disciplinary measures were imposed during the period from 1 July to 31 December 2017[3]

24. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure or measures imposed by the Secretary-General. The functional title of the staff members or other particulars relating thereto are provided only when they played a role in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed, although statistical information about such cases is provided in Section IV below.

25. As noted above, both aggravating and mitigating circumstances may be taken into account in determining a sanction, and these vary according to the unique facts and circumstances of a case. Examples of possible aggravating circumstances are the repetition of acts of misconduct, the intent to derive personal benefit and the degree of harm resulting from the misconduct. Examples of possible mitigating circumstances are sincere remorse and the voluntary disclosure of the acts of misconduct early in the process.

26. Not every case brought to the attention of the Assistant Secretary-General for Human Resources Management indicating possible misconduct results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case, or when a staff member provides a satisfactory explanation in response to the formal allegations of misconduct, the case is closed. Cases will also typically be closed when a staff member retires or otherwise separates from the Organization before an investigation or the disciplinary process is concluded, unless continuation is in the interest of the Organization. In the vast majority of cases involving former staff members, a record is made and placed in the former staff member's official status file so that the matter may be further considered if and when the staff member rejoins the Organization. In this regard, section 3.9 of the

[3] Information contained in the summaries is correct as at the date of submission of the present report.

administrative instruction on the administration of fixed-term appointments (ST/AI/2013/1) provides that a former staff member "will be ineligible for re-employment following ... resignation during an investigation of misconduct or institution of a disciplinary process, unless the former staff member agrees to cooperate with an ongoing investigation or disciplinary process until its conclusion". Where relevant, this provision is noted in records placed in official status files. This process is set out in section 9.9 of ST/AI/2017/1.[4]

27. In paragraph 23 of its resolution 68/252, the General Assembly requested the Secretary-General to take appropriate measures to mitigate and recoup any losses arising from misconduct by staff members and to report thereon. As the summaries of the cases below indicate, in the majority of the cases where there was a quantifiable loss to the Organization, the Organization either recovered the relevant property and/or funds, the staff member repaid the funds at issue or the Under-Secretary-General for Management decided to recover an amount equal to the financial loss. As outlined in sections 9.5 and 9.6 of ST/AI/2017/1, the recovery of financial losses to the Organization is effected under staff rule 10.1 (b), which provides that where conduct is determined by the Secretary-General to constitute misconduct and the Organization has suffered a financial loss as a result of the staff member's actions, which are also determined to be wilful, reckless or grossly negligent, such staff member may be required to reimburse the Organization for such loss in whole or in part.

A. Abuse of authority, harassment and discrimination

28. A staff member created an intimidating, hostile and offensive work environment for two staff members by repeatedly and publicly accusing them of incompetence in the execution of their functions and by verbally abusing them. *Disposition*: deferment, for two years, of eligibility for consideration for promotion, a fine in the amount of one month's net base salary and loss of two steps in grade. *Appeal*: the time for appeal has not expired.

29. A staff member, who held the position of a security officer, verbally abused three United Nations Police officers and transported a civilian in a United Nations vehicle without authorization. There were mitigating factors, including the staff member's long service with the Organization. *Disposition*: written censure and loss of two steps in grade. *Appeal*: none.

B. Misrepresentation and false certification

30. A senior staff member altered written records held in connection with a recruitment process. There were mitigating factors, including an early admission, no resulting personal gain and no effect on the outcome of the recruitment process.

[4] A screening/vetting tool is under development by the Office of Information and Communications Technology, with the collaboration of other internal stakeholders, to implement the objective outlined by the Secretary-General in his reports to the General Assembly on special measures for protection from sexual exploitation and sexual abuse (A/69/779 and A/71/818) to create and maintain a centralized database of substantiated and certain other allegations of sexual exploitation and abuse that is accessible across United Nations entities. For more information, see paragraphs 22 and 23 of the report of the Secretary-General on special measures for protection from sexual exploitation and sexual abuse (A/72/751).

Disposition: censure and a fine of one month's net base salary. *Appeal*: the time for appeal has not expired.

31. A staff member participated in the creation of fraudulent visa applications in exchange for money. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

32. A staff member offered to assist one or more persons external to the Organization with securing United Nations employment in exchange for money. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: filed with the Dispute Tribunal, but the application was denied (receivability).

C. Unauthorized outside activities and conflict of interest

33. Without authorization, a staff member engaged in outside activities relating to private legal services. *Disposition*: demotion by one grade with deferment, for one year, of eligibility for consideration for promotion. *Appeal*: none.

34. A staff member engaged in unauthorized outside activities, including public activities. There were mitigating factors, including an early admission and long service with the Organization. *Disposition*: written censure. *Appeal*: the time for appeal has not expired.

35. A staff member engaged in the unauthorized outside activity of the ownership and operation of a company that offered printing and design services, including to United Nations agencies. There were mitigating factors, including an early admission and long service with the Organization. *Disposition*: loss of two steps in grade, deferment, for a period of two years, of eligibility for consideration for promotion and a fine of three months' net base salary. *Appeal*: the time for appeal has not expired.

36. A staff member engaged in outside employment by working as a consultant for the Organization without authorization. There were mitigating factors, including an early admission. *Disposition*: written censure, loss of two steps in grade and a fine equivalent to three months' net base salary. *Appeal*: none.

D. Assault and abusive conduct

37. A staff member physically assaulted one or more family members. There were mitigating factors, including the staff member's early admission. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: the time for appeal has not expired.

38. A security staff member physically assaulted another staff member, who was under his supervision. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: the time for appeal has not expired.

39. A security staff member physically assaulted another staff member, who supervised him. The fact that the physical altercation was reciprocal was considered to be a mitigating factor. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: the time for appeal has not expired.

E. Failure to honour private obligations

40. A senior staff member failed to honour his private legal obligations relating to the payment of rent. There were aggravating factors, including the fact that the conduct harmed the reputation of the Organization in the host country. *Disposition*: written censure and a loss of four steps in grade. *Appeal*: filed with the Dispute Tribunal.

F. Misuse of United Nations property and assets

41. A staff member used a very high frequency radio that had been issued to him for duty purposes as security for a personal loan. There were mitigating factors, including an early admission. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: none.

IV. Data on cases received and completed during the reporting period

A. Cases completed during the reporting period

Table 1
Disposition of cases completed between 1 July and 31 December 2017

Disposition	*Number*
Dismissal	–
Separation from service, with notice or compensation in lieu of notice and with or without termination indemnity	6
Other disciplinary measures	8
Administrative measures	3
Closed with no measure	1
Not pursued as a disciplinary matter	8
Separation of the staff member prior to or after referral of the case to the Office of Human Resources Management prior to the completion of the disciplinary process	21
Other	3
Total	**50**

B. Appeals against disciplinary measures

Table 2
Disposition of the appeals contesting disciplinary measures imposed between 1 July 2009 and 31 December 2017

Disposition	*Number*	*Percentage*
Win by the respondent and cases withdrawn by staff member at the Dispute or Appeals Tribunal[a]	44	80
Settled	8	14.5

Disposition	*Number*	*Percentage*
Overall loss by respondent[b]	3	5.5
Total	**55**	**100**
Staff member's appeal pending at the Dispute or Appeals Tribunal or time for appeal to the Appeals Tribunal has not expired	22	

[a] This number includes cases in which: the respondent prevailed at the Dispute Tribunal and there was no appeal by the staff member to the Appeals Tribunal; the respondent prevailed at the Dispute Tribunal and at the Appeals Tribunal; the staff member prevailed at the Dispute Tribunal but the respondent prevailed at the Appeals Tribunal; or the staff member's appeal to the Dispute Tribunal was withdrawn.

[b] The number includes cases in which: the respondent prevailed at the Dispute Tribunal but the staff member prevailed at the Appeals Tribunal; or the staff member prevailed at the Dispute Tribunal and there was no appeal filed by the respondent to the Appeals Tribunal.

C. Cases received by the Office of Human Resources Management

42. The tables in the present section provide information on the number and types of cases referred to the Office of Human Resources Management for possible disciplinary action during the period covered by the present report.

Table 3
Source of cases received by the Office of Human Resources Management between 1 July and 31 December 2017

Source	*Number*	*Percentage*
Cases relating to staff based at United Nations Headquarters and offices away from Headquarters	16	31
Cases relating to field staff	36	69
Total	**52**	**100**

Table 4
Cases received between 1 July and 31 December 2017, by type of misconduct

Type of misconduct	*Number*
Abuse of authority/harassment/discrimination	8[a]
Assault (verbal and physical)	3
Misrepresentation and false certification	12
Inappropriate or disruptive behaviour	2
Misuse of United Nations property or assets	4
Failure to honour private legal obligations	1
Failure to report	1
Sexual exploitation and abuse	5
Theft and misappropriation	4
Unauthorized outside activities and conflict of interest	6
Violation of local laws	2

Type of misconduct	*Number*
Procurement irregularities	2
Other	2
Total	**52**

[a] The Office of Human Resources Management received no cases of sexual harassment during the reporting period.

V. Possible criminal behaviour

43. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, nine cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States.

VI. Conclusion

44. The Secretary-General invites the General Assembly to take note of the present report.